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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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12 GINGER SEITLES,
13 Plaintiff,
14 v.
15 NO. CIV. S-04-2725 FCD/DAD
16 UNUM PROVIDENT, UNUM LIFE
17 INSURANCE COMPANY OF AMERICA,
18 Defendants.
19 -----oo0oo-----
20 This matter is before the court on the parties' cross-
21 motions for judgment on the administrative record, pursuant to
22 Federal Rule of Civil Procedure 52,¹ arising out of defendants
23 UnumProvident Corporation and Unum Life Insurance Company of
24 America's (collectively, "defendants" or "UNUM") denial of
25 plaintiff Ginger Seitles' ("plaintiff") claim for long-term

26 ¹ Rule 52(a)(1) provides in pertinent part: "In an action
27 tried on the facts without a jury . . . , the court must find the
28 facts specially and state its conclusions of law separately. The
findings and conclusions may be stated on the record after the
close of the evidence or may appear in an opinion or a memorandum
of decision filed by the court."

1 disability ("LTD") benefits.²

2 For the reasons set forth below, the court finds that the
3 proper standard of review of this matter is abuse of discretion,
4 as opposed to de novo, and thereunder, the court finds that UNUM
5 did not act arbitrarily or capriciously in denying plaintiff's
6 LTD benefits claim. As such, the court DENIES plaintiff's motion
7 for judgment in her favor and HEREBY GRANTS judgment in favor of
8 UNUM.

9 **BACKGROUND**

10 **A. The Policy**

11 The California Independent System Operator ("CAL ISO"),
12 plaintiff's former employer, purchased the UNUM Group Long Term
13 Disability Policy Number 519640 (the "Plan") to provide long-term
14 disability coverage for its active, eligible employees. Relevant
15 to this action, the Plan provides, in pertinent part, as follows:

16 **HOW DOES UNUM DEFINE DISABILITY?**

17 You are disabled when UNUM determines that:

- 18 - you are **limited** from performing the **material**
and substantial duties of your regular occupation
due to **sickness** or **injury**; and
- 19 - you have a 20% or more loss in your **indexed monthly**
earnings due to the same sickness or injury.

20 After 24 months of payments, you are disabled when
21 UNUM determines that due to the same sickness or
22 injury, you are unable to perform the duties of any
23 gainful occupation for which you are reasonably fitted
by education, training or experience. (Administrative
Record ["AR"], filed July 29, 2009 [Docket #30],
UACL00021.)

26
27 ² Because oral argument will not be of material
assistance, the court orders these matters submitted on the
briefs. E.D. Cal. L.R. 78-230(h). Neither party filed a reply
28 on the motions.

1 **CERTIFICATE SECTION**

2 The policy is delivered in and is governed by
3 the laws of the governing jurisdiction and to the
4 extent applicable by the Employee Retirement Income
5 Security Act of 1974 (ERISA) and any amendments. When
6 making a benefit determination under the policy,
7 UNUM has discretionary authority to determine your
8 eligibility for benefits and to interpret the terms and
9 provisions of the policy. (AR: UACL00015.)

10 **WHEN DOES YOUR COVERAGE END?**

11 Your coverage under the policy or plan ends on the
12 earliest of:

13 . . .
14 -the date you are no longer in an eligible group . . .
15 -the last day you are in active employment except as
16 provided under the covered layoff or leave of absence
17 provision. (AR: UACL00018.)

18 **ELIGIBLE GROUP(S):**

19 All employees in active employment. (AR: UACL00009.)

20 **MINIMUM HOURS REQUIREMENT:**

21 Employees must be working at least 30 hours per week.
22 (AR: UACL00009.)

23 **ACTIVE EMPLOYMENT** means that you are working for your
24 Employer for earnings that are paid regularly and that
25 you are performing the material and substantial duties
26 of your regular occupation. You must be working at
27 least the minimum number of hours as described under
28 Eligible Group(s) in each plan. (AR: UACL00043.)

(Emphasis in original.)

20 **B. Plaintiff's Employment History**

21 Plaintiff worked for CAL ISO as a Senior Market Integration
22 Engineer. CAL ISO is a not-for-profit public-benefit corporation
23 charged with operating the majority of California's high-voltage
24 wholesale power grid. Plaintiff was hired by CAL ISO on July 7,
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1 1997, and her last date of employment was November 16, 2001.³
2 Although plaintiff now asserts that she left her employment
3 because of a disability (AR: UACL00348-00349), records from
4 plaintiff's personnel file indicate that she was terminated
5 because of job performance issues. Her personnel file includes
6 an October 11, 2001 memorandum entitled "Performance Improvement
7 Plan for Ginger Seitles." (AR: UACL00846-00849). Said
8 memorandum indicates that plaintiff's managers, supervisors and
9 co-workers had complained about certain inappropriate behavior by
10 plaintiff, including that she "barged" into issues in which she
11 had no involvement, "jumped to conclusions" unnecessarily and
12 made "racially insensitive slurs." (Id.) CAL ISO scheduled a
13 further review of plaintiff's performance for November 15, 2001.
14 However, on November 11, 2001, plaintiff entered into a
15 settlement agreement with CAL ISO wherein she agreed to the
16 termination of her employment in exchange for a payment of
17 \$27,742.68, representing four months pay; plaintiff also released
18 CAL ISO from any claims arising from the termination of her
19 employment. (AR: UACL00881-883.) Notably, there are no records
20 in plaintiff's personnel file which indicate that, during the
21 entirety of her employment with CAL ISO, she had any issues
22 relating to her physical ability to perform her job due to
23 multiple sclerosis ("MS") (which plaintiff now maintains rendered
24 her disabled from performing her job for the company). (AR:
25 UACL00846-849.)

³ Neither party has provided a citation to the administrative record for these facts; however, the parties also do not dispute plaintiff's dates of employment with CAL ISO so the court has accepted these facts as true.

1 Following the termination of her employment with CAL ISO,
2 plaintiff began looking for new employment. (AR: UACL00954-00959,
3 UACL001249, UACL001253, UACL001256, UACL001257.)⁴ Ultimately,
4 she did not accept other employment. She explained in a later
5 personal injury action that she declined certain positions due to
6 injuries she sustained in an automobile accident in July 2002.
7 (See Section E below.)

8 **C. UNUM's Review of Plaintiff's Initial Benefits Claim**

9 On May 7, 2003, sixteen months after her employment with CAL
10 ISO had ended, plaintiff filed a Disability Claim Form with UNUM
11 in which she asserted she was unable to work as of November 16,
12 2001 due to MS that had been diagnosed in April 1998. She
13 claimed her MS symptoms had worsened over time. (AR: UACL00348.)
14 In support of her claim, plaintiff submitted an Attending
15 Physician's Statement from Philip B. Baldi, D.O., who concluded
16 that plaintiff had been disabled since November 16, 2001 due to
17 neck pain, MS, cervical disease and shoulder pain. Dr. Baldi
18 listed plaintiff's restrictions as "anything that will exacerbate
19 back [and] shoulder [pain], like bending, lifting, reaching,
20 [and] computer work." (AR: UACL00352.)

21 In reviewing plaintiff's claim, UNUM considered various
22 medical records predating plaintiff's claimed date of disability
23 of November 16, 2001 as well as records post-November 16, 2001.
24 The pre-November 16 records included the following: (1) a June

25 ⁴ Said citations reference plaintiff's deposition
26 testimony, discussed below, and various letters UNUM received
27 from prospective employers, including community colleges and
28 other companies, whom plaintiff interviewed with following her
termination from CAL ISO (said interviews took place in April
2002 and June 2002).

1 19, 2001 report from Dr. Baldi indicating that plaintiff
2 complained of a rash, gastroenteritis and nausea (AR: UACL00442);
3 and (2) a November 13, 2001 report from Dr. James C. Stoody, a
4 neurologist, indicating that plaintiff complained of a "stabbing
5 discomfort in her feet and numbness in her extremities" but
6 "denied any motor impairment;" Dr. Stoody performed an
7 examination of plaintiff and concluded that there were "no
8 significant abnormalities on motor, sensory, reflex testing,
9 cranial nerve exam or gait and station assessment;" Dr. Stoody
10 described that plaintiff's symptoms were "entirely subjective at
11 this point in time" but that her symptoms could potentially be
12 "cervical in level," and he recommended she have a cervical MRI
13 scan. (AR: UACL00545.) Plaintiff did not report to either Drs.
14 Baldi or Stoody that she was unable to work, physically or
15 otherwise. (Id.)

16 Post-plaintiff's alleged date of disability of November 16,
17 2001, UNUN considered a November 28, 2001 office note of Dr.
18 Baldi which described that plaintiff was very stressed due to
19 losing her job, and that she felt "anxious about her unemployment
20 and a little bit depressed." (AR: UACL00443.) Again, however,
21 plaintiff did not complain that she was unable to work,
22 physically or otherwise.

23 Thereafter, on December 17, 2001, plaintiff had an MRI of
24 her cervical spine, as ordered by Dr. Stoody, that showed a
25 "moderate sized right paracentral disc protrusion impinging on
26 the right side of the spinal column." (AR: UACL00543.) On
27 December 27, 2001, Dr. Stoody examined plaintiff and concluded
28 that the "cervical MRI scan . . . shows a C5-6 disc herniation

1 that is fairly substantial and eccentric to the right indenting
2 the spinal cord, but producing no signal change there." He
3 requested an EMG study regarding plaintiff's complaints of right
4 arm numbness and recommended that plaintiff see him in four
5 months. (AR: UACL00548.)

6 On February 26, 2002, plaintiff had a nerve conduction study
7 of her right upper extremity, which was normal. (AR: UACL00550.)
8 Also, on February 26, after seeing plaintiff, Dr. Stodoxy noted as
9 follows:

10 [Plaintiff] reports a sizeable improvement in radicular
11 symptoms. She actually has very little in the way of
12 pain. The cervical disc herniation producing radiculopathy
13 seems to have resolved. She has positive CSF serology
14 consistent with MS. Visual evoked potentials were normal.
15 Previous MRI scanning showed normal appearing white
16 matter. *I cannot state that she unequivocally has multiple*
sclerosis, however, I think it is probable and it is
reasonable to continue the Copaxane. We will see her again
17 in three to four months for follow up. The size of the
disc herniation was substantial, but at this juncture with
her asymptomatic state, I cannot recommend surgical
intervention. It is not possible to state whether the disc
herniation has [contributed] to any degree to her symptoms.
(AR: UACL00549.) (Emphasis added.)

18 In addition, plaintiff saw Dr. Baldi on February 26, 2002; he
19 diagnosed her with fungal nails, and plaintiff requested a
20 referral to a plastic surgeon for breast reduction surgery. (AR:
21 UACL00444.)

22 Plaintiff was involved in an automobile accident on July 27,
23 2002. Thereafter, on July 29, 2002, she saw Dr. Baldi,
24 complaining of headache, upper back pain, upper thoracic pain,
25 low back pain and left hand pain. Dr. Baldi diagnosed plaintiff
26 with (1) muscular ligamentous strain of the cervical and thoracic
27 muscles; (2) left shoulder pain with normal exam; and (3) left
28 hand pain. (AR: UACL00447.)

1 Plaintiff did not follow up with Dr. Stoody in three to four
2 months as he had recommended during the February 26, 2002 office
3 visit. Instead, plaintiff returned to Dr. Stoody on July 30,
4 2002, over five months later, complaining of injuries that she
5 sustained in the motor vehicle accident on July 27, 2002. Dr.
6 Stoody noted that neurologically plaintiff appeared to be stable.
7 He declined to see her regarding personal injury issues. Dr.
8 Stoody concluded that plaintiff was "ambulatory and appear[ed] to
9 be quite stable from a physical standpoint." (AR: UACL00551.)

10
11 On August 13, 2002, plaintiff was seen by Dr. Baldi. She
12 complained of neck and left shoulder pain. Dr. Baldi again
13 diagnosed plaintiff with muscular ligamentous strain of the
14 cervical and upper thoracic spine and strain of the left
15 shoulder. (AR: UACL00448.)

16 **D. UNUM's Initial Decision on Plaintiff's Benefits Claim**

17 After a review of the above medical records, on August
18 5, 2003, UNUM denied plaintiff's benefits claim, finding that
19 there was no clear diagnosis of MS and no findings to support a
20 disability based on cervical back pain. (AR: UACL00568-573.)
21 UNUM advised plaintiff of her right to administratively appeal
22 the decision. However, plaintiff never appealed the decision and
23 instead, filed the instant suit on November 2, 2004. Plaintiff
24 originally filed the case in state court, but defendants removed
25 the action to this court on December 28, 2004.

26 **E. UNUM Reassesses Plaintiff's Benefits Claim**

27 During the course of this litigation, UNUM entered
28 settlement agreements with the United States Department of Labor

1 and state insurance regulators. (Makabenta Decl., filed July 31,
2 2009, ¶ 2.) As part of those settlements, UNUM agreed to
3 reconsider claims that it had previously denied using new
4 guidelines and procedures designed to ensure a fair and balanced
5 decision. (Id.)

6 In February of 2005, UNUM offered plaintiff the right to
7 participate in the reassessment process. On March 1, 2005,
8 plaintiff agreed to have UNUM reassess her claim, pursuant to the
9 settlement agreements, and she agreed to a stay of this action
10 pending UNUM's review. (Id. at ¶ 4.)

11 In reassessing plaintiff's benefits claim, UNUM considered,
12 in addition to the medical records discussed above, the
13 following:

14 **(1) Plaintiff's Social Security Administration ("SSA")
15 File**

16 In January 2003, plaintiff applied for social security
17 disability benefits, asserting she was disabled since November
18 16, 2001. After having plaintiff examined by a mental health
19 practitioner on February 25, 2003, the SSA found plaintiff
20 disabled primarily due to anxiety related disorders. Pertinent
21 notes from that examination provided as follows:

22 She is very cooperative. Described her mood as
23 depressed. Mood was flat to very depressed. She was
24 almost expressionless and moved very slowly and absent
25 mindedly. There was some indications of delusional and
magical thinking with irrational fear of going out
of her home and fear of being alone. She is not suicidal
at this time but it cannot be ruled out. She seemed
paranoid at times but reports no hallucinations. Speech
was slowed and tangential. Difficult time staying on
track. Memory was poor, difficulty with short-term memory
and verbal recall.
27 Axis 1: panic disorder with agoraphobia and major
depressive disorder, chronically depressed.
28 Axis 3: MS.

1 Axis 4: poor human relations, isolation, homebound.
2 Axis 5: 40. Serious symptoms and impairment in social
and occupational functioning. (AR: UACL00645.)

3 The SSA did not find plaintiff impaired from performing full-time
4 work from a physical standpoint. Dr. Mark Tambellini examined
5 plaintiff on behalf of the SSA and found that plaintiff could
6 stand, walk or sit about six hours in an eight hour day. (AR:
7 UACL00718.) Ultimately, the SSA approved plaintiff's claim for
8 social security disability benefits as of November 16, 2001.

9 **(2) A Further Review of Plaintiff's Medical Records**

10 On February 19, 2007, UNUM requested a file review of
11 plaintiff's medical records by a neurologist and a psychiatrist.
12 UNUM asked of these physicians: "Do the records on file support
13 any R&L's or impairment (psychiatric or MS related) prior to or
14 as of 11/16/01 which was the date [plaintiff] was terminated from
15 her employer?" (AR: UACL00886.)

16 Dr. Sabrina W. Hammond, Board Certified in Internal
17 Medicine, responded to UNUM as follows (AR: UACL00898-902):
18 (1) while there was some support for plaintiff's diagnosis of MS,
19 Dr. Hammond found "there [was] [in]sufficient medical evidence
20 showing a loss of function or loss of ability to perform
21 occupational duties due to [MS]. The medical records provided
22 prior to and at the date of disability do not support any
23 impairment from the diagnosis of multiple sclerosis[;]"

24 (2) Dr. Hammond found that plaintiff's "symptoms were
25 self-reported, mild in nature and physical and neurological
26 testing were essentially normal. Physical exam found no
27 corresponding abnormalities in motor, sensory, reflex testing,
28 cranial nerve exam or gait and station assessment. [Plaintiff's]

1 complaints were basically sensory in nature. There was minimal
2 pain reported with her MS symptomology. There was a complaint of
3 memory loss and cognitive dysfunction however this was not
4 evaluated at or near the date of disability;" and (3) Dr. Hammond
5 concluded that plaintiff's medical records did not support any
6 impairment from the diagnosis of MS; there were no supported
7 restrictions and limitations for this diagnosis and her medical
8 records did not provide evidence that plaintiff was physically
9 unable to perform the requirements of her job for CAL ISO. (AR:
10 UACL00898.)

11 Additionally, neuropsychologist D. Malcolm Spica, Ph.D.,
12 reviewed plaintiff's file and concluded as follows:

13 After reviewing the entire file, I do not find to a
14 reasonable degree of professional certainty that
15 [plaintiff's] psychiatric condition rose to the level
16 of impairment around her 11/01 date of disability. A
subsequent evaluation two years later does document
significant psychiatric symptomology (GAF = 40).

17 However, it is not clear to me that the later diagnosis
18 is relevant to the disability claim due to the lapse of
time between her date of disability and the evaluation,
and multiple intervening events including introduction
19 of medications, unemployment, and a motor vehicle
accident. Overall, although I acknowledge the [2/03]
examination results, the file does not reflect that the
20 claimant's level of behavioral health care was
consistent with a debilitating psychiatric disorder.
(AR: UACL00893-895.)

22 **(3) Plaintiff's Deposition Testimony in Her Personal
23 Injury Action**

24 Plaintiff sustained personal injuries as a result of an
25 automobile accident on July 27, 2002, and subsequently filed a
26 civil action against the other driver. UNUM obtained certain
27 documents from that action, including plaintiff's deposition
28 testimony provided on May 19, 2004. Therein, plaintiff testified

1 that following the termination of her employment with CAL ISO,
2 she actively sought other employment, including jobs with other
3 ISOs as well as teaching positions. (AR: UACL 00954-959.) She
4 claimed she was the "number one" candidate for a job with the New
5 York ISO but ultimately had to reject the position due to the
6 automobile accident. (*Id.*) She also testified that she was
7 unable to pursue a dean of instruction position at a local
8 community college due to the injuries she sustained as result of
9 the automobile accident. (*Id.*) Plaintiff testified that her
10 short term memory loss, depression and general pain, which she
11 complained of to her neurologist, was more from the motor vehicle
12 accident than her MS. (AR: UACL00941-959.)

13 **F. UNUM Issues Final Denial of Plaintiff's Benefits Claim**

14 On April 9, 2007, after completing its reassessment of
15 plaintiff's claim, UNUM denied plaintiff's claim for LTD
16 benefits. In pertinent part, UNUM concluded as follows:

17 The records in [plaintiff's personal] file document she
18 [was] terminated . . . and settled with California ISO
19 on November 11, 2001 . . . [Plaintiff's May 19, 2004]
20 deposition transcript established that [plaintiff]
21 believed she was capable of working full time up to the
22 date of the [motor vehicle accident]. She indicated
23 that she settled with the CA ISO, resigned and applied
24 for numerous jobs, interviewed for some, and claimed
25 she would have taken a job at the New York ISO had she
not been in an MVA. [Plaintiff] also indicated she was
going to substitute teach and in fact applied for a full
time, tenure track position as a Business Assistant
Professor. [Plaintiff] was also asked why she did not
work after her employment ended with the CA ISO and
in-between the MVA. She answered because she was
seeking employment and looking for a job that would fit
her lifestyle. After her resignation with the CA ISO
she was looking for jobs in her area of expertise.
[Plaintiff] further testified that she was awarded
permanent disability by the SSA subsequent to the MVA.
In addition, she testified that in speaking with her
neurologist about her short term memory loss, depression,
and the pain was not so much from the MS but more from

1 the MVA accident.

2 Based on our review of all the documentation in the file[,]
3 [t]he records support that as November 16, 2001
4 [plaintiff] was not disabled when she terminated her
employment with CA ISO. The medical records reviewed by
our medical department did not support a continuous
disabling condition. [Plaintiff] may have had a later
period of disability as a result of her injuries sustained
in the MVA of July 2002; however, this period of disability
was not covered under the UNUM policy. Because [plaintiff]
was not disabled on her last day worked, coverage ended on
November 16, 2001. Therefore, we are upholding
the decision to deny liability on her claim. (AR:
UACL01304-1307.)

9 **STANDARD**

10 Before reaching the merits of the parties' motions, the
11 court must determine whether to apply de novo or abuse of
12 discretion review to UNUM's denial of plaintiff's LTD benefits.
13 The Plan at issue here is governed by the Employee Retirement
14 Income Security Act of 1974 ("ERISA"). In Firestone Tire &
15 Rubber Co. v. Bruch, the United States Supreme Court held that a
16 challenge to the denial of benefits under an ERISA plan is
17 reviewed de novo "unless the benefit plan gives the administrator
18 or fiduciary discretionary authority to determine eligibility for
19 benefits or to construe the terms of the plan." 489 U.S. 101,
20 115 (1989). When a plan document gives an administrator such
21 discretionary authority, a court must apply the "abuse of
22 discretion" or "arbitrary and capricious" standard of review to
23 its decision to deny benefits. Id. at 111; see also Abatie v.
24 Alta Health & Life Ins. Co., 458 F.3d 955, 963 (9th Cir. 2006).

25 In this case, the Plan unambiguously grants UNUM discretion
26 when reviewing claims. The Plan expressly states that "[w]hen
27 making a benefit determination under the policy, UNUM has
28 discretionary authority to determine your eligibility for

1 benefits and to interpret the terms and provisions of the
2 policy." (AR: UACL00015.) Only where there are procedural
3 violations "so flagrant as to alter the substantive relationship
4 between the employer and employee, thereby causing the
5 beneficiary substantive harm," does the court apply de novo
6 review despite the discretionary grant of authority. Gatti v.
7 Reliance Standard Life Ins. Co., 415 F.3d 978, 985 (9th Cir.
8 2005). As an example of what constitutes "wholesale and flagrant
9 violations of the procedural requirements of ERISA," the Ninth
10 Circuit in Abatie cited the facts in Blau v. Del Monte Corp., 748
11 F.2d 1348 (9th Cir. 1984), noting that in Blau, "the
12 administrator had kept the policy details secret from the
13 employees, offered them no claims procedure, and did not provide
14 them in writing the relevant plan information." Abatie, 458 F.3d
15 at 971.

16 No such failure "to comply with virtually every applicable
17 mandate of ERISA" is at issue here. Id. Nonetheless, plaintiff
18 claims that de novo review should apply because of the structural
19 conflict of interest that exists in this case. UNUM does not
20 dispute that such a conflict exists here since it both
21 administers and funds the subject Plan.⁵ That fact, however,
22 does not require application of de novo review. Montour v.
23 Hartford Life & Accident Insur. Co., - F.3d -, No. 08-55803, 2009
24 WL 2914516, *5 (9th Cir. Sept. 14, 2009) (emphasizing that the
25 existence of a structural conflict of interest does not alter the
26

27 ⁵ A structural conflict of interest exists where the plan
28 administrator is also the insurer since benefits are paid out of
the administrator's own pocket, and thus, by denying benefits,
the administrator retains money for itself.

standard of review itself, rather it alters the *application* of the standard). In reviewing the administrator's decision, the conflict of interest must be weighed as a factor in determining whether there is an abuse of discretion. *Id.* at *4; accord Metropolitan Life Insur. Co. v. Glenn, 128 S. Ct. 2343, 2350 (2008). The extent to which a conflict of interest appears to have motivated an administrator's decision "is one among potentially many relevant factors that must be considered," including the "quality and quantity of the medical evidence, whether the plan administrator subjected the claimant to an in-person medical evaluation or relied instead on a paper review of the claimant's existing medical records, whether the administrator provided its independent experts 'with all of the relevant evidence[,]' and whether the administrator considered a contrary SSA disability determination, if any." *Id.* at *5 (citing MetLife, 128 S. Ct. at 2352). Ultimately, "[t]he weight the court assigns to the conflict factor depends on the facts and circumstances of each particular case." *Id.* Therefore, this court recognizes that the inherent conflict of interest found in this case is a factor to consider when analyzing UNUM's denial of Plan benefits; however, the conflict of interest does not alter the standard of review, which, in this case, the court concludes is abuse of discretion.

ANALYSIS

Applying the abuse of discretion standard of review, the sole issue before the court is whether UNUM abused its discretion, or in other words, acted arbitrarily and capriciously, in denying plaintiff's LTD benefits claim. An

1 administrator's decision is an abuse of discretion only when it
2 is without reason, unsupported by substantial evidence or
3 erroneous as a matter of law. Id. at *4 (describing abuse of
4 discretion standard when a conflict of interest is not at issue);
5 Taft v. Equitable Life Ins. Co., 9 F.3d 1469, 1472 (9th Cir.
6 1994). So long as the administrator's decision has a rational
7 basis, the court is not free to substitute its own judgment for
8 that of the administrator in determining the eligibility for plan
9 benefits even if the court disagrees with that decision. Id.
10 Under the abuse of discretion standard, the only issue is
11 whether, on the evidence considered, the administrator's
12 determination was "reasonable." Horan v. Kaiser Steel Retirement
13 Plan, 947 F.2d 1412, 1417 (9th Cir. 1991); see also Clark v.
14 Wash. Teamsters Welfare Trust, 8 F.3d 1429, 1432 (9th Cir. 1993)
15 ("Our inquiry is not into whose interpretation of plan documents
16 is most persuasive, but whether the plan administrator's
17 interpretation is unreasonable.")

18 Moreover, the scope of review under the arbitrary and
19 capricious standard is very limited. The focus of an abuse of
20 discretion inquiry is the administrator's analysis of the
21 administrative record--it is not an inquiry into the underlying
22 facts. Alford v. DCH Found Group Long-Term Disability Plan, 311
23 F.3d 955, 957 (9th Cir. 2002). Thus, the court will not consider
24 information outside the administrative record, as it would be
25 improper to find a claims administrator abused its discretion
26 based on evidence not before it at the time the decision was
27 made. Taft, 9 F.3d at 1472.

28

1 As set forth above, because UNUM has a structural conflict
2 of interest in this case, the court must consider that fact in
3 its application of the above standards.

4 Here, a review of the administrative record reveals that
5 UNUM did not abuse its discretion in denying plaintiff's LTD
6 benefits claim. The evidence shows that UNUM made a reasonable
7 conclusion based on the materials and records at its disposal,
8 and there is no evidence its conflict of interest impacted the
9 decision on plaintiff's claim.

10 Plaintiff's assertion that she was disabled on her last day
11 of employment with CAL ISO, on November 16, 2001, simply is not
12 supported by the record. Plaintiff's medical records predating
13 November 16 do not establish that she was precluded from
14 performing her job duties due to MS. And, even accepting
15 plaintiff's claimed diagnosis of MS as true, that diagnosis,
16 standing alone, is not sufficient to find that plaintiff was
17 disabled as of November 16, 2001. The Ninth Circuit has
18 recognized repeatedly that merely because "a person has a true
19 medical diagnosis . . . does not by itself establish disability."
20 Jordan v. Northrop Grumman Corp. Welfare Benefit Plan (Jordan
21 II), 370 F.3d 869, 880 (9th Cir. 2004) (upholding the denial of
22 the plaintiff's benefits claim not because the plaintiff failed
23 to demonstrate the existence of a medical condition
24 [fibromyalgia] but because the plaintiff was unable to prove that
25 her physical disability kept her from performing her job).

26 In this case, in June and November 2001, plaintiff did not
27 complain to Drs. Baldi or Stoody that she was unable to work,
28 physically or otherwise, and neither physician concluded as such.

1 Indeed, on November 13, 2001, just days before plaintiff's
2 claimed date of disability, Dr. Stoody specifically noted that
3 plaintiff "denied any motor impairment," and his examination of
4 plaintiff revealed "no significant abnormalities" with "motor,
5 sensory, reflex testing, cranial nerve exam or gait and station
6 assessment." (AR: UACL00545.)

7 Moreover, plaintiff's personnel file indicates that she
8 separated her employment with CAL ISO due to performance issues;
9 she agreed to the termination of her employment in exchange for
10 severance monies, and she released CAL ISO from any claims
11 relating to her termination. Nothing in plaintiff's personnel
12 records indicates that, during her employment, she had any
13 medical issues which precluded her from performing her job duties
14 for CAL ISO. (AR: UACL00846-849.)

15 Following her termination, plaintiff actively sought other
16 employment. This fact is conclusively established by plaintiff's
17 own deposition testimony, wherein she describes her efforts to
18 obtain similar jobs at other state ISOs and teaching positions at
19 various community colleges. Indeed, she testified that it was
20 the automobile accident in July 2002 that precluded her from
21 obtaining subsequent employment; she did not testify that her MS,
22 or any other medical condition, precluded her from working prior
23 to the accident.

24 Plaintiff's medical records post-November 16, 2001 and
25 predating the July 2002 automobile accident likewise do not
26 support a finding that plaintiff was disabled as of November 16,
27 2001. In her office visit on November 28, 2001 with Dr. Baldi,
28 plaintiff reported only that she was stressed and a "bit

1 depressed" due to losing her job at CAL ISO; she did not report
2 that she was unable to work due to any physical or mental
3 condition. Additionally, through June 2002, none of plaintiff's
4 medical records indicate a completely, disabling condition.
5 Moreover, even after plaintiff's automobile accident, Dr. Stoody
6 reported, in July 2002, that plaintiff was "ambulatory and
7 appear[ed] to be quite stable from a physical standpoint." (AR:
8 UACL00551.) While Dr. Baldi did diagnosis plaintiff with
9 muscular ligamentous strain of the cervical and upper thoracic
10 spine and strain of the left shoulder during the same period, his
11 findings were made within days of plaintiff's July 27, 2002
12 accident--an accident which occurred over seven months after
13 plaintiff left her employment with CAL ISO.

14 In addition, the court finds particularly significant to
15 this case that plaintiff did not apply for LTD benefits from UNUM
16 until May 7, 2003, sixteen months after her termination from CAL
17 ISO. In neither moving for or opposing judgment in the case has
18 plaintiff explained the reason for this delay nor does the
19 administrative record reveal a reason. To the extent the record
20 sheds any light on the issue, it suggests that plaintiff did not
21 apply for benefits because she was *not* disabled from working. As
22 set forth above, her own sworn testimony establishes that post-
23 her termination from CAL ISO she continued to actively seek other
24 employment and did not ultimately secure other employment due to
25 the automobile accident, not any disability related to her MS
26 (diagnosed during her employment with CAL ISO). Plaintiff
27 testified that she had not worked between her departure from CAL
28 ISO and the car accident because she "was seeking employment and

1 looking for a job that would fit [her] lifestyle." (AR:
2 UACL00955-956.) Plaintiff did not testify that she was not
3 working due to a disability. Plaintiff claimed that the
4 automobile accident caused her to become disabled. (AR:
5 UACL00951, UACL00956.) She sought lost earnings of \$163,000 and
6 lost future earnings of \$2,649,600. (AR: UACL00997.) Plaintiff
7 could not have obtained such earnings if she was, in fact,
8 disabled prior to the motor vehicle accident.

9 Based on these facts, the court cannot find that UNUM acted
10 unreasonably in issuing its initial denial of plaintiff's
11 benefits claim in August 2003. Horan, 947 F.2d at 1417. UNUM's
12 decision that plaintiff's medical records did not demonstrate
13 that her MS precluded her from performing her job duties for CAL
14 ISO was a rational conclusion based on the evidence before it.
15 Moreover, the reasonableness of UNUM's decision is further
16 bolstered by its review of plaintiff's claim as part of its
17 reassessment process generated by the settlement agreements with
18 the United States Department of Labor and state regulators.
19 During that reassessment process, UNUM specifically considered
20 the SSA's award of benefits to plaintiff dating back to November
21 16, 2001. Montour, 2009 WL 2914516 at *10 (holding that while
22 ERISA plan administrators are not bound by the SSA's
23 determination, complete disregard for a contrary conclusion
24 without an explanation raises questions about whether an adverse
25 benefits determination was the product of a principled and
26 deliberative reasoning process). Here, UNUM reasonably
27 determined that the SSA's award of benefits did not dictate a
28 finding that plaintiff was disabled from working at CAL ISO on

1 November 16, 2001. The SSA based its award primarily on anxiety
2 related disorders--disorders which plaintiff did not complain
3 about until after her July 2002 accident. Additionally, as to
4 plaintiff's physical capabilities, the SSA found that plaintiff
5 could stand, walk or sit about six hours in an eight hour day.
6 Thus, the SSA's findings do not support the conclusion that
7 plaintiff had physical aliments that precluded her from working
8 in November 2001.⁶

9 Significantly, UNUM did not reject the SSA's findings based
10 solely on its administrator's opinions. Instead, it requested a
11 file review by a neurologist and a psychiatrist. Dr. Hammond
12 found that plaintiff's medical records did not support any
13 impairment from the diagnosis of MS, and there were no supported
14 restrictions and limitations for this diagnosis. He concluded
15 that plaintiff's medical records did not provide evidence that
16 plaintiff was physically unable to perform the requirements of
17 her job for CAL ISO. As to plaintiff's alleged psychiatric
18 condition, Dr. Spica concluded that plaintiff's later diagnosis
19 in February 2003 of psychiatric problems was irrelevant to her
20 condition in November 2001, considering the significant lapse in
21 time and multiple intervening events, including the introduction
22 of medications, unemployment and a motor vehicle accident. Based
23 on Drs. Hammond's and Spica's opinions, and considering the
24 entirety of the record evidence it had before it, including

25
26 ⁶ It is also noteworthy that the SSA did not review
27 plaintiff's personnel file or obtain records from plaintiff's
28 personal injury action. Said documents amply support critical
findings by UNUM in denying plaintiff's claim.

1 plaintiff's personnel file and deposition testimony, UNUM
2 reasonably reached a contrary conclusion to the SSA.

3 Finally, in reviewing UNUM's decision, the court has
4 considered its structural conflict of interest. However, under
5 the facts of this case, that conflict does not weigh heavily.
6 "The level of skepticism with which a court views a conflicted
7 administrator's decision may be low if a structural conflict of
8 interest is unaccompanied, for example, by any evidence of
9 malice, of self-dealing, or of parsimonious claims-granting
10 history." Abatie, 458 F.3d at 968. Here, plaintiff argues that
11 UNUM has a history of biased claims administration, but she
12 submits no admissible evidence on this issue. Her reliance on a
13 Second Circuit case finding evidence of such biased
14 administration by UNUM and a law review article in accord is not
15 evidence of biased handling relating to *plaintiff's* claim. To
16 the contrary, the evidence in this record suggests precisely the
17 opposite as UNUM offered to reassess plaintiff's claim and in
18 doing so, it specifically considered the SSA's award of benefits
19 and it conducted a further review of plaintiff's medical records
20 by hiring independent experts to conduct a file review. Because
21 there is no evidence of malice or self-dealing in UNUM's denial
22 of plaintiff's claim here, the court's skepticism of UNUM is de
23 minimus. Thus, while the court considers the inherent conflict
24 of interest found in UNUM because it both administers and funds
25 the Plan, that conflict, coupled with no other significant
26 factor, does not provide the court grounds to find an abuse of
27 discretion.

1 CONCLUSION
2

3 For the foregoing reasons, the court DENIES plaintiff's
4 motion for judgment in her favor and HEREBY GRANTS judgment in
5 favor of UNUM. The Clerk of the Court is directed to close this
6 file.

7 IT IS SO ORDERED.
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DATED: September 29, 2009
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FRANK C. DAMRELL, JR.
UNITED STATES DISTRICT JUDGE

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